

UNITED STATES OF AMERICA,

Plaintiff,

v.

WASHINGTON GOLF AND  
COUNTRY CLUB,

Defendant.

Civil Action No.

COMPLAINT

## NATURE OF ACTION

1. This is a civil claim for natural resource damages brought pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended, 42 U.S.C. §§ 9601 *et seq.*, and the Federal Water Pollution Control Act (“Clean Water Act” or “CWA”), 33 U.S.C. §§ 1251 *et seq.*, and for damages to park system resources brought pursuant the Park System Resources Protection Act (“PSRPA”), 16 U.S.C. §§ 1911 *et seq.*, with respect to releases of hazardous substances (“Release”) caused by Defendant Washington Golf and Country Club (“WGCC”) at and from WGCC’s golf course in Arlington, Virginia on or about August 23-24, 2001.

## JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this claim pursuant to 28 U.S.C. §§ 1331 and 1345; 42 U.S.C. §§ 9607(a) and 9613(b); 33 U.S.C. §§ 1321(e)(2) and (n); and 16 U.S.C. § 19jj-2.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), 42 U.S.C. § 9613(b), and 16 U.S.C. § 19jj-2, because the release of hazardous substances and the resulting damages took place within this judicial district.

## PARTIES

4. Pursuant to Section 107(f)(2)(A) of CERCLA, 42 U.S.C. § 9607(f)(2)(A), and Section 311(f)(5) of the Clean Water Act, 33 U.S.C. § 1321(f)(5), plaintiff the United States of America (“United States”) is a trustee for natural resources injured as a result of the Release. In addition, the United States, acting through the National Park Service, was at all times in possession of those lands within the boundaries of the George Washington Memorial Parkway that were impacted by the Release.

5. Defendant Washington Golf and Country Club is a non-profit corporation organized under the laws of the Commonwealth of Virginia with its principal place of business located on North Glebe Road in Arlington, Virginia.

## GENERAL ALLEGATIONS

6. The President has designated the Secretary of the Interior as the trustee for various natural resources. *See* Exec. Order No. 12,580, as amended by Exec. Order No. 12,077, 61 Fed. Reg. 45871 (Aug. 28, 1996); 40 C.F.R. § 300.600(b)(2). The trusteeship of the Secretary of the Interior includes, but is not limited to, the following natural resources and their supporting ecosystems:

threatened and endangered species, migratory birds, certain anadromous fish and certain federally managed water resources.

7. The Regional Director of the FWS, Region 5, has been designated by the Secretary of the Interior as the authorized official for natural resource damage assessment activities relating to the Release.

8. The George Washington Memorial Parkway was created by Pub. L. No. 71-284, 46 Stat. 482 (May 29, 1930), as part of the park and parkway system of the National Capital for purposes “including the protection and preservation of the Potomac,” *id.* at 483. It became part of the National Park System as a result of Executive Order No. 6166 (eff. June 10, 1933), issued pursuant to Section 16 of Pub. L. No. 72-428, 47 Stat. 1489, 1517 (March 3, 1933), the Reorganization of 1933. The United States maintains the George Washington Memorial Parkway for the benefit of the people of the United States, and any who would use and enjoy the Parkway for its established purposes.

9. WGCC operates a golf course for recreational use by its members and guests. On or about August 23, 2001, WGCC applied a soil fumigant to certain portions of its property. During the period of August 23-24, 2001, runoff from WGCC’s property containing hazardous substances found in the soil fumigant entered Donaldson Run and Gulf Branch, two tributaries of the Potomac River that flow through the George Washington Memorial Parkway downstream from the Release.

10. The August 23-24, 2001 release of hazardous substances resulted in injury and/or damage to natural resources under the trusteeship of DOI and FWS, including the death of a substantial number of American eels and fish and virtual elimination of smaller aquatic organisms immediately downstream of the release. As a result of the Release, DOI has incurred expenses

responding to and assessing the injury to natural resources and will incur additional such expenses in the future.

11. Under Section 107 of CERCLA, 42 U.S.C. § 9607, and 43 C.F.R. Part 11, the Secretary of the Interior, in her role as a natural resource trustee, is entitled to recover damages for injury to natural resources, including (1) the cost to restore, replace, or acquire the equivalent of such natural resources; (2) the compensable value of lost services resulting from the injury to resources; and (3) the reasonable cost of assessing injury to the natural resources and the resulting damages.

12. Under Section 311(f)(4) of the Clean Water Act, 33 U.S.C. § 1321(f)(4), the United States is entitled to recover damages for injuries to natural resources, including the costs of restoring or replacing natural resources damaged or destroyed.

13. Portions of Donaldson Run and Gulf Branch downstream of the Release run through lands managed by the NPS as part of the George Washington Memorial Parkway. Due to public safety concerns related to the Release, the NPS temporarily closed certain areas within the boundaries of the George Washington Memorial Parkway, including two scenic overlooks and a section of the Potomac Heritage Trail.

14. The Release from WGCC's golf course resulted in the destruction, loss of, and injury to park system resources within the meaning of the PSRPA, 16 U.S.C. §§ 19jj-1, including the loss of use and enjoyment of park system resources by park visitors. As a result of the Release, the United States has incurred expenses in responding to the destruction and loss of park system resources, and in monitoring and assessing the damages incurred, and will incur additional such expenses in the future.

15. The PSRPA, 16 U.S.C. § 19jj-1(a), provides that “any person who destroys, causes the loss of, or injures any park system resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury.”

FIRST CLAIM FOR RELIEF  
Natural Resource Damages Under CERCLA

16. The allegations set forth in paragraphs 1 through 13 are re-alleged and incorporated herein by reference.

17. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part as follows:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, . . .
- (4) . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for -
  - (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; . . .

18. Defendant WGCC is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

19. The golf course owned and operated by WGCC from which hazardous substances were released on or about August 23-24, 2001, is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20. Hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were “released” from the facility into the “environment” within the meaning of Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. § 9601(22) and (8).

21. Defendant WGCC is within the classes of persons described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

22. The release of hazardous substances from the facility operated by WGCC caused injury to, destruction of, and loss of natural resources, within the meaning of Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

23. The natural resources that have been injured, destroyed, or lost as a result of the Release of hazardous substances from the facility operated by Defendant WGCC include “natural resources” as that term is defined in 42 U.S.C. § 9601(16), for which the United States is a trustee.

24. The United States has incurred and continues to incur costs related to the assessment of the loss of natural resources for which the United States is a trustee, resulting from the Release of hazardous substances by WGCC.

25. Pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607(a), Defendant WGCC is jointly and severally liable to the United States for damages for injury to, destruction of, and loss of natural resources for which DOI is a trustee, including the loss of use and costs of restoration, replacement, or acquisition of equivalent resources resulting from the Release of hazardous substances from the facility operated by Defendant WGCC, and for the United States’ unreimbursed costs of assessing such injury and damages.

SECOND CLAIM FOR RELIEF  
Natural Resource Damages Under the Clean Water Act

26. The allegations set forth in paragraphs 1 through 13 are re-alleged and incorporated herein by reference.

27. Section 311(b)(3) of the Clean Water Act, 33 U.S.C. § 1321(b)(3), prohibits any unpermitted discharge of a hazardous substance into or upon the navigable waters of the United States in such quantities as may be harmful.

28. Section 311(f)(2) of the Clean Water Act, 33 U.S.C. § 1321(f)(2), provides in pertinent part that any owner or operator of an onshore facility from which oil or a hazardous substance is discharged in violation of subsection 311(b)(3) shall be liable to the United States for the costs of removal of such oil and hazardous substances, and that the United States may bring an action against such owner or operator to recover such costs.

29. Section 311(f)(4) of the Clean Water Act, 33 U.S.C. § 1321(f)(4), provides in pertinent part:

The costs of removal of . . . a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government . . . in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of . . . a hazardous substance in violation of subsection (b) of this section.

30. Donaldson Run and Gulf Branch are navigable waters of the United States within the meaning of Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7).

31. The golf course operated by WGCC from which the Release occurred is an onshore facility within the meaning of Section 311(a)(10) of the Clean Water Act, 33 U.S.C. § 1321(a)(10).

32. The Release of hazardous substances from the golf course operated by WGCC into

navigable waters of the United States was a discharge within the meaning of Sections 502(12) and 311(a)(2) of the Clean Water Act, 33 U.S.C. §§ 1362(12) and 1321(a)(2).

33. Upon information and belief, the materials released from the golf course operated by WGCC contained hazardous substances within the meaning of Section 311(b)(3) of the Clean Water Act, 33 U.S.C. § 1321(b)(3), and its implementing regulations, in quantities harmful to the public health and welfare of the United States, within the meaning of Section 311(b)(3) and (4) of the Clean Water Act, 33 U.S.C. § 1321(b)(3) and (4), and its implementing regulations.

34. Defendant WGCC is a person within the meaning of Sections 311(a)(7) and 502(5) of the Clean Water Act, 33 U.S.C. § 1321(a)(7) and 33 U.S.C. § 1362(5).

35. Defendant WGCC was the operator of the facility from which hazardous substances were released into Donaldson Run and Gulf Branch on or about August 23-24, 2001, within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).

36. The natural resources injured by the Release are under the trusteeship of the United States within the meaning of Section 311(f)(5) of the Clean Water Act, 33 U.S.C. § 1321(f)(5).

37. The Release of hazardous substances from the golf course operated by WGCC has caused and continues to cause injury to, destruction of or loss of natural resources, which natural resources belong to, are managed by, are held in trust by, appertain to, or are otherwise controlled by the United States.

38. Defendant WGCC is liable to the United States, pursuant to Section 311(b)(3), (f)(2), (f)(4) and (f)(5) of the CWA, 33 U.S.C. § 1321(b)(3), (f)(2), (f)(4) and (f)(5), for any costs or expenses incurred by the United States in the restoration, replacement and acquisition of the equivalent of natural resources damaged or destroyed as a result of the Release of hazardous



substances by WGCC.

THIRD CLAIM FOR RELIEF  
Damages to Park System Resources  
Under the Park Systems Resource Protection Act

39. The allegations set forth in paragraphs 1 through 10 and 13-15 are re-alleged and incorporated herein by reference.

40. Defendant WGCC did destroy, cause the loss of, or injure park system resources within the boundaries of the George Washington Memorial Parkway.

41. Pursuant to the PSRPA, 16 U.S.C. § 19jj-1(a), Defendant WGCC is jointly and severally liable for all past and future response costs and damages resulting from this destruction, loss of, and injury to park system resources.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

(1) Enter a judgment against WGCC, for liability to the United States pursuant to CERCLA Section 107(a)(4)(C), 42 U.S.C. § 9607(a)(4)(C), for all damages for injury to, destruction of, and loss of natural resources within the trusteeship of the United States resulting from the August 23-24, 2001 release of hazardous substances by WGCC, including the unreimbursed past, present, and future costs of assessing such damages, the cost of restoring, replacing, and/or acquiring the equivalent of those injured resources, and the past, present, and future diminution in value of those resources pending restoration or replacement, in an amount to be proven at trial;

(2) Enter a judgment against WGCC, for liability to the United States, pursuant to Section 311(f)(4) of the Clean Water Act, 33 U.S.C. § 1321(f)(4), for all costs of restoring,

replacing, and/or acquiring the equivalent of natural resources damaged or destroyed as a result of the August 23-24, 2001 release of hazardous substances by WGCC, and including the costs of assessing such damages and the diminution in value of those resources pending restoration or replacement, in an amount to be proven at trial;

(3) Enter a judgment against WGCC for all response costs and damages in accordance with 16 U.S.C. §§ 19jj, *et seq.*, in an amount to be determined at trial;

(4) Enter a judgment against WGCC for all costs of this action, including attorney's fees; and

(5) Award the United States such other and further relief as this Court may deem appropriate.

Respectfully submitted,

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